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effect by the majority of the court. With regard to the question of knowledge on the part of the testator, at the time of making the will, of insufficiency of assets, the dissenting opinion presents at least an inference that such knowledge was lacking, and with this premise the opinion is logical. The prevailing opinion, however, not only fails to find that testator possessed such knowledge, but expressly states, "It is not to be assumed that the testator inserted such provisions as these in his will unless he was of opinion that there would be a sufficient amount of personal property passing to his daughters at the time of his death, thereby enabling them to carry out his requirements of setting apart a trust fund."

WITNESSES—CLAIM OF IMMUNITY FROM PROSECUTION FOR PERJURY BY BANKRUPT, TESTIFYING UNDER SEC. 7, SUBD. 9 OF BANKRUPTCY ACT.—Sec. 7, Subd. 9, of the Act of Congress of July 1, 1898, c. 541, 30 Stat. 548 (U. S. Comp. Stat. 1901, p. 3425), provides that the bankrupt shall "submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors," etc., "but no testimony given by him shall be offered in evidence against him in any criminal proceeding." Defendant was convicted of having made a false oath in this examination provided for by the Act. He defended on the ground that the immunity, extended to him in the section of the Act above quoted, that his testimony so given should not "be offered in evidence against him in any criminal proceeding," applied to and covered the case of a criminal prosecution for perjury committed in giving such testimony. *Held*, that the statutory immunity did not extend to a prosecution for perjury, committed in the testimony of the bankrupt and that such testimony was properly admitted to convict the defendant. PHILIPS, J., dissented, *Edelstein v. United States* (1907), — C. C. A., 8th Circ. —, 149 Fed. Rep. 636.

In support of its position the court says, "To hold that the statute protects a bankrupt from the use of his evidence in a prosecution for perjury while actually testifying would defeat the obvious purposes of the Act * * *. It would, in effect, secure to the bankrupt the immunity in question for violating his part of the compact, namely, to testify—that is, to testify truthfully—by virtue of which he secured a right to the immunity." PHILIPS, J., dissents from the main opinion, and it must be admitted that the better logic seems to sustain his position. He says, in speaking of the bankrupt, "No case could be made out against him under an indictment for perjury without offering in evidence his testimony given in the examination." He calls attention to the fact that the proviso added in other similar statutes, such as the Act of Feb. 25, 1868 (U. S. Comp. St. 1901, p. 661), and in the Interstate Commerce Act of Feb. 11, 1893 (U. S. Comp. St. 1901, p. 3173), that the immunity granted in those acts shall not exempt the witness testifying from punishment for falsely swearing while so testifying, is omitted in the Bankruptcy Act. This omission, he says, "is most significant," and would indeed seem to indicate that Congress did not intend that the immunity given should be so abridged. The view taken in the principal case does not find support in all jurisdictions. In *United States v. Simon*, 146 Fed. 92, a

directly opposing conclusion was reached. The court was there of the opinion that it would not be warranted in adding by implication, the proviso that the immunity granted should not extend to prosecutions for perjury in falsely testifying, and holds that the defendant so indicted could not be convicted of perjury under the bankruptcy statute. The question has occasionally arisen in cases where objection has been made to the bankrupt's application for discharge, that he has been guilty of the crime of false swearing, a sufficient cause for withholding the discharge. *In re Marx et al.*, 102 Fed. 676, was such a case. The court held that it was legally impossible to convict the bankrupt of the crime of false swearing, because of the statutory immunity in the Bankruptcy Act, and for a like reason the evidence of the bankrupt could not be used to prove a crime on his part sufficient to sustain an objection to his application for discharge. In accord with this case is *In re Logan*, 102 Fed. 876. Other cases, while holding that the testimony of the bankrupt may not be used against him in a prosecution for perjury, differ from the cases just cited in holding that it may be used in objecting to an application for discharge in bankruptcy. *In re Goodale*, 109 Fed. 783; *In re Dow's Estate*, 105 Fed. 889; *In re Gaylord*, 112 Fed. 668; *In re Leslie*, 119 Fed. 406. The reason given is that an application for discharge is not a criminal but a civil proceeding and that the immunity given extends only to the use of the evidence in a criminal proceeding, and furthermore that it is immaterial that the bankrupt cannot be convicted and punished for the crime of which his evidence shows him to be guilty. These cases would seem to be authority for a conclusion contrary to that in the principal case, that the testimony of the bankrupt given in the examination provided for by the Bankruptcy Act cannot be used against him in a prosecution for perjury in giving it.